

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3639 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

V.D. SHUKLA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioners

MR SR DIVETIA for Respondents No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/10/97

C.A.V. JUDGEMENT

1. This is the special civil application under Article 226 of the Constitution, filed by six petitioners out of which five are Mechanical Supervisors (now known as Mechanical Additional Assistant Engineers) in the Irrigation Department of the State of Gujarat. Sixth petitioner is the Association of Mechanical Additional Assistant Engineers. The petitioners prayed for the direction to the respondents to revise the pay scale of

Mechanical Additional Assistant Engineers earlier Supervisors Mechanical to Rs.550-900 with effect from 1-1-1973. After filing of this special civil application, it has been amended by the petitioners and now the prayer which has been made is to direct the respondents to revise the pay scale of Mechanical Additional Assistant Engineers earlier Supervisors Mechanical to Rs.650-1200 with effect from 1-1-1973 or from other date as may be fixed by this Court and to further direct the respondents to make the payment of arrears within time as may be prescribed by this Court. Further prayer has been made for consequential orders of the payment of arrears under the revised pay scale.

2. Reply to this special civil application has been filed by the respondents.

3. The facts which are not in dispute are that in the former State of Bombay there was one cadre known as 'Overseers' consisting of Degree holders, Diploma holders and non-qualified subordinate staff. The pay scale of Overseers' cadre was Rs.80-270. Under the G.R. No.PSE-1062(I)-G dated 19th June, 1962 of the Public Works Department, the question of revision of pay scales of Overseers cadre and reorganising their cadre suitability was considered by the Government. Accordingly, the existing cadre of Overseers was split up into three cadres, namely, Junior Engineer, Supervisor and Overseer. The graduates, Diploma Holders and non-qualified persons were designated as Junior Engineers, Supervisors and Overseers respectively. Their pay scales were prescribed as Rs.200-350, Rs.130-270 and Rs.80-200 respectively. So on the basis of qualifications as early as in 1966 with effect from 1-8-1962, different pay scales have been prescribed by the respondents. Under Sarela Pay Commission, the pay scale of Junior Engineer (now Assistant Engineer), Supervisor (now Additional Assistant Engineer) and Overseers were recommended as Rs.325-575, Rs.250-480 and Rs.175-345 respectively. The pay scale of Assistant Engineers was further revised with effect from 1st April, 1972 to Rs.350-600 and they have been given the rank of Class-II Gazetted Officers. The Desai Pay Commission recommended the pay scales for these posts as Rs.550-900, Rs.425-700 and Rs.350-600.

4. Under Gujarat Civil Services (Revision of Pay) Rules, 1987 effective from 1-1-1986, the pay scale of Additional Assistant Engineers was revised to Rs.1400-2300 whereas the pay scale of Assistant Engineers was revised to Rs.1640-2900. After the Rules, 1987, the

State Government appointed High Level Committee to deal with the problems of Pay anomalies etc.. The High Level Committee suggested revision of the pay scale of Assistant Engineers from Rs.1640-2900 to Rs.2000-3200 whereas in the case of Additional Assistant Engineers, the Committee did not make any recommendation. However, in the case of Additional Assistant Engineers, the pay has been further revised by the Government to Rs.1640-2900 with effect from 1-4-1992. The petitioners in this special civil application have demanded for the scale of Rs.550-900 which has been given to the Assistant Engineers.

5. The petitioners have come up with a case that the persons of the cadre of Overseers now Foreman Mechanical, Auto Foreman are working under the control of Additional Assistant Engineer. Persons of this cadre are having the qualifications either of S.S.C. or VIII standard. The pay scale of this category of persons was all the time much lower than the pay scale of Supervisors now Additional Assistant Engineers. The Desai Pay Commission recommended the pay scale of Rs.350-600 to this class of persons. The cadre of Foreman Mechanical working in the department neither have qualification of diploma nor degree in Engineering but were brought at par with the pay scale of Additional Assistant Engineer i.e. Rs.425-700. However, this category of persons were not satisfied with this pay scale and have filed special civil application before this Court and therein claimed the pay scale of Rs.550-900. This Court has decided that special civil application on 25th January, 1983 and their claim for pay scale of Rs.500-900 was accepted. The judgment of this Court aforesaid has been implemented by the Government under its resolution dated 17th July, 1984 and pay scale for the post of Foreman/Foreman Mechanical/Foreman Automobiles under P.W.D. (now Roads and Building Department and Irrigation department) were revised from Rs.425-700 to Rs.550-700 with effect from 1-10-1978. So this category of persons in the department who were neither having Diploma nor Degree were brought above the Diploma holders in par with the Degree holders in the matter of pay scale. So this class of persons who were in the pay scale of Rs.350-600 were further brought to two higher steps by the Government itself first to the stage of Rs.425-700 and second under the order of this Court to the stage of Rs.550-900. The petitioners were given the pay scale corresponding to Rs.550-900 from 1-4-1992 but their grievance is that the persons who were non-Diploma holders and subordinate to them have been given the higher pay scale. Since August, 1962, three different pay scales are being prescribed on the basis of

qualifications and those persons belonging to non-qualified categories got the march over the Diploma holders and were brought at par with the Degree holders. However, it is not in dispute that the Degree holder Assistant Engineers were brought to the higher pay scale of Rs.650-1200 later on.

6. The learned counsel for the petitioners contended that the criteria for giving of the higher pay scale was justified by the respondents in their reply with reference to qualification and even their case is considered with reference to this criterion then certainly they should have been given the pay scale higher than the pay scale of Foreman. It has further been contended that when the pay scale of Foreman was brought at par with the pay scale of Additional Assistant Engineers then from that very date the Additional Assistant Engineers should have been brought to the higher pay scale. The pay scale of Foreman were now made at par with the pay scale of Assistant Engineers. So both the petitioners and Assistant Engineers should have been placed in the higher pay scale than Rs.550-900. The counsel for the petitioners lastly contended that so far as the Assistant Engineers and Additional Assistant Engineers are concerned, they are discharging the same duties and functions and they have further channel of promotion to the next higher post, and as such, on the basis of parity in the employment and on the doctrine of 'equal pay equal work' they should have been placed in the same pay scale which has been given to the Assistant Engineers.

7. On the other hand, the counsel for the respondents Smt. Siddhi Talati contended that on the basis of qualifications, different pay scales can be prescribed for the same post and in support of this contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of State of Tamilnadu vs. M.R. Alagappan reported in AIR 1997 SC 2006. The qualification for appointment to the post of Assistant Engineer is Degree in Engineering whereas for Additional Assistant Engineers is diploma, and as such, the claim of the petitioners, what she contended for the pay scale prescribed for Assistant Engineer do not stand to any rationality or justification. So far as the Foremen are concerned, the counsel for the respondents contended that the pay scale of Rs.550-900 has been given to this category as per the judgment of this Court in their favour, and when that benefit has been given as per the judgment of this Court, the petitioners cannot claim parity when they were not the party to that judgment.

Lastly, the counsel for the respondents contended that the Foremen were brought at par with the pay scale of Additional Assistant Engineers as they have no chance of future promotions.

8. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

9. From reply of the respondents as well as the contentions raised by their counsel, it is no more in dispute that since 1st August, 1962, these three posts were taken to be different for the pay scales on the basis of qualifications. This difference is maintained from 1-4-1967 as well as from 1-1-1973. Still it is the case of the respondents that the qualification is one of the criteria for fixing of the two different pay scales of the post but if we go by the facts of this case then what I find is that in the say and in implementation there is a vast difference. If the qualification was the criterion in prescribing two different pay scales then how the respondents are justified to bring at par the Foremen - unqualified persons with the Diploma holders. From 1st August, 1962, this class of persons - the Foremen were placed in the lowest pay scale treating them to be unqualified but in the later years in 1975 all that considerations have gone and under the pretext as what it is contended by the counsel for the respondents that they have no chance of promotion they have been brought at par with the Diploma holders. However, the petitioners are not challenging the action of the respondents to bring these persons at par with them. What precisely their grievance is that having due consideration of their qualification and which is accepted earlier also they should have been given the higher pay scale than what it has been given to the Foremen.

10. The next grievance is that this Court has accepted the claim of this class of persons for the pay scale of Rs.550-900 and taking into consideration the fact that the petitioners are Diploma holders their pay scale should have been higher than Rs.550-900. Whatever justification given by the respondents to give the pay scale, at first stage on their own at par with the petitioners and then the pay scale at par with the Assistant Engineers under the order of this Court is hardly of any substance. The respondents since 1st August, 1962 have drawn a distinction in the qualification of graduate, diploma and unqualified for fixing of the pay scales and that criterion should not have been go by. This Court has accepted the claim of the Foremen for the pay scale of Rs.550-900, but it is

not the case of the respondents that this Court has given the direction that the pay scale of Diploma holders should not have been made higher than the pay scale which is sought to be given to the unqualified Foremen. When these persons were given the pay scale of Rs.550-900 under the resolution dated 17th July, 1984 from 1st October, 1978 then the petitioners' claim for the pay scale higher than this pay scale deserves consideration. If the petitioners are also given the same pay scale which has been given to the Foremen - nonqualified persons, then the distinction which has been drawn way back on 1-8-1962 on the basis of qualification will no more remain. The unqualified persons were brought to the level of graduates in Engineering though under the order of this Court, but merely on the ground that this has been done under the Court's order, I fail to see any justification in the action of the respondents not to consider the case of the petitioners to give them the pay scale in between the Foremen - unqualified persons and Degree holders - Assistant Engineers. So the claim of the petitioners for fixing of their pay scale in between Rs.550-900 and Rs.650-1200 deserves serious consideration. However, no final verdict is to be given as it is a matter to be decided by the respondents.

11. There is yet another aspect on which serious consideration of the respondents is required. From the date on which the Foremen were brought at par with the pay scale of petitioners i.e. Rs.425-700, the claim of the petitioners for higher pay scale than this deserves consideration. The claim of the petitioners for giving them the higher pay scale than Rs.425-700 till 30th September, 1978 and then the pay scale higher than Rs.550-900 cannot be said to be without any substance or basis. However, the claim of the petitioners for parity in the pay scale with the pay scale of Assistant Engineers deserves no consideration. In case this claim is accepted then what this Court will do - that on the basis of different qualifications still the same pay scale has to be prescribed. This is contrary to what the Supreme Court said in many of the decisions. Otherwise also, if this claim of the petitioners is accepted then no distinction can be made on the ground of qualification and irrespective of same if the persons are doing the same work and duties then they will be entitled for the same pay scale. Even if this contention is accepted then the claim of the petitioners for pay scale higher than that of Foremen may otherwise have no legs to stand. In view of the decision of the Hon'ble Supreme Court in the case of Shyam Babu Verma vs. Union of India reported in 1994 (2) SCC 521 and another decision in the case of

State of Tamilnadu vs. M.R. Alagappan (supra) this claim has no merits.

12. In the result, this special civil application succeeds and the same is allowed. The respondent-State of Gujarat is directed to consider the claim of the petitioners for giving them the pay scale higher than Rs.425-700 from the date on which this pay scale was given to the Foremen till 30th September, 1978, and for the higher pay scale than Rs.550-900 from 1st October, 1978 to 31st December, 1985 and then the pay scale higher than Rs.1640-2900 i.e. corresponding of the pay scale ultimately found to be given to them from 1-1-1986, and decide it finally within a period of six months from the date of receipt of certified copy of this Court. In case the aforesaid claim is accepted then the arrears payable to the petitioners be determined within two months and the payment of the same may be made to the petitioners within one month next. While considering this claim of the petitioners, the respondent-State shall take into consideration its own earlier resolutions and circulars starting from 1966, the observations made by this Court in this judgment as well as the decision of this Court given on 25th January, 1983 in special civil application filed by the Foremen of the Department, and the resolution of the Department dated 17th July, 1984 in which the reference to that decision has been made. In case the claim of the petitioners is not accepted then a reasoned order may be passed and copy of which may be sent to the petitioners by registered post. In case of difficulty, liberty to the petitioners for revival of this special civil application. The special civil application and rule stand disposed of in the aforesaid terms with no order as to costs.

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